

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13979
Docket No. 13858
08-2-NRAB-00002-080007**

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

**(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(Canadian Pacific Railway (Soo Line Railroad Company)**

STATEMENT OF CLAIM:

- “1. That in violation of the controlling Agreement, Rule 12 in particular, the Canadian Pacific Railway, as a result of an investigation conducted on March 1, 2007, at Minneapolis, Minnesota, unjustly and arbitrarily disciplined Assistant Telecommunication Maintainer Emmet Van Deusen.**
- 2. That, accordingly, the Canadian Pacific Railway be ordered to promptly make Telecommunication Maintainer Emmet Van Deusen whole for all losses sustained as a result of the Canadian Pacific Railway’s unjust assessment of discipline; and that all record of this matter be expunged from Emmet Van Deusen’s personal record, and in accordance with the terms of Rule 12, Paragraph h of the controlling Agreement.”**

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

According to the record of formal investigation conducted March 1, 2007, Claimant Van Deusen had been employed an Assistant Telecommunication Maintainer at Minneapolis, MN for approximately two years when this dispute arose over Carrier's imposition of a ten (10) day disciplinary suspension for his failure to attend a second scheduled day of Safety Training.

The facts surrounding that incident are straightforward. Claimant had been scheduled to attend a two-day safety review on Thursday and Friday, February 15 and 16, 2007. He attended the first session on February 15 without incident, but did not show for the second day on February 16. For that incident, Carrier found him in violation of GCOR Rule 1.13 – Reporting and Complying with Instructions and issued the discipline here challenged by the Organization.

Although the hearing transcript before the Board is somewhat attenuated, it is apparent from Claimant Van Deusen's testimony that on the afternoon of the first training day he had advised Training Specialist Mary Steely that he "probably would not be in on Friday." He concedes he provided no explanation for his problem. Upon awakening the next morning, he says he then attempted to call S&C Supervisor Tom Byers to inform him that he could not attend class, but that Byers was not in the office. Although he did not leave a voice mail message to that effect Claimant says he then e-mailed Byers that he was unable to attend training.

Carrier maintains that Claimant was well aware of his schedule and deliberately chose not to attend training as instructed. He had no authority to simply advise a training officer that he would not show up, nor did Ms. Steely have either any right to excuse him. Additionally, it is undisputed that Mr. Byers did not give Claimant permission to absent himself, and that he never informed Byers of the circumstances preventing him from attending. In short, Claimant was in clear violation of his employer's absenteeism policy and the discipline assessed was totally consistent with Carrier's progressive discipline policies.

The Organization argues that Carrier's Hearing Officer failed to discharge his responsibility to conduct a fair and impartial hearing by first identifying Mr.

Byers as a witness with potentially relevant testimony to offer, summoning him to attend Claimant's investigation but then not calling him a witness. Carrier thus deprived the Organization of its valuable right to cross-examine. Further, the Organization contends, the 10-day suspension imposed here was disproportionate to the severity of the offense and unduly severe in relation to penalties assessed for more serious misconduct on the part of other employees.

As a general rule, this Board will not substitute its judgment for that of Carrier in disciplinary matters where the evidence establishes the misconduct charged. In this instance, however, two aspects of dispute suggest an exception to that principle is warranted. First, we gain a sense from this record that the training officer easily may have avoided the entire problem at issue had she made it clear to the Claimant that she had no authority to excuse his attendance on Friday and that unless he obtained such permission through proper channels, she expected to see him the next morning. Secondly, as the Organization correctly argues, the circumstances do not present a situation in which an employee with chronic attendance problems simply "cut class" with no effort to advise his employer of his plans. Insofar as this record reveals, his record was unblemished and he did make three attempts to inform Carrier representatives of his plans. Against that background, loss of a half-month's pay is arbitrarily harsh as a first step on the path of progressive discipline.

Claimant was responsible for failing to comply with instructions as charged when he did not report for Safety Training on February 16. For the reason stated above, the discipline imposed will be reduced to five (5) days and Claimant shall be made whole for the difference in pay and benefits lost.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make

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the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 25th day of November 2008.